

\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: July 31, 2015*

+ **LPA 45/2015**

SURAT SINGH

..... Appellant

Represented by: Ms.Neelam Tiwari, Advocate

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Represented by: Mr.Avnish Ahlawat, Advocate
with Ms.Latika Chaudhary,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.1626/2015

For the reasons stated in the application 583 days delay in filing the appeal is condoned.

Application is disposed of.

LPA 45/2015

1. Having heard learned counsel for the parties, we only wish that the appellant and the respondent had brought to the notice of the learned Single Judge relevant facts which had transpired just before WP(C) 5092/2011 was filed by the respondent.
2. After serving the appellant with a charge-sheet and holding an inquiry penalty of removal from service was inflicted upon the appellant.
3. An industrial dispute was raised. On March 26, 2008, the appropriate

Government made a reference to the learned Labour Court whether removal of appellant from service was illegal and/or unjustified.

4. After pleadings were completed, on February 13, 2009, the learned Labour Court framed the issue : Whether a valid and proper inquiry was conducted?

5. Vide decision dated October 18, 2010, the learned Labour Court held that the inquiry was not vitiated on any count. Thereafter, vide award dated December 06, 2010, the learned Labour Court held that the penalty was harsh. The learned Labour Court looked into the past service record showing propensity of the appellant to remain unauthorisedly absent. The learned Labour Court took note of the fact that the charge which resulted in the penalty of removal from service being inflicted was of unauthorised absence. Learned Labour Court found that there was some justification for the unauthorised absence evidenced by the fact that wife of the appellant was unwell and was under treatment at Babu Jagjivan Ram Hospital.

6. The learned Labour Court directed reinstatement of the appellant without any back wages.

7. Relevant would it be to highlight that the learned Labour Court did not substitute the penalty; a course adopted by the learned Labour Court which prima-facie appears to be illegal. If the learned Labour Court found that the misdemeanour was proved but held that the penalty was severe, the learned Labour Court ought to have inflicted a suitable penalty. But it appears that since the learned Labour Court did not award back wages, the learned Labour Court was of the opinion that the same would be adequate penalty.

8. Be that as it may, DTC filed a writ petition challenging the award and

urged therein that past misconduct of the same kind i.e. unauthorized absence justified the penalty of removal from service. The writ petition was drafted somewhere in the month of May, 2011. The writ petition was filed in July 2011. But before that the appellant had attained the age of superannuation on April 30, 2011.

9. Nobody brought this fact to the notice of the learned Single Judge and the result was a limited notice being issued on July 21, 2011, in which the learned Single Judge noted that the learned Labour Court had not inflicted any punishment and thus the notice was being issued limited to the question of what lesser punishment could be inflicted.

10. Had DTC brought to the notice of the learned Single Judge that the appellant had a non-pensionable service, the question of any penalty post-retirement being inflicted does not even arise. Had the learned Single Judge been informed as aforesaid either limited notice would not have been issued or the writ petition would have been decided at the preliminary hearing itself.

11. Be that as it may, the result was that when the writ petition came up for final hearing once again nobody brought to the notice of the learned Single Judge that the appellant had already attained the age of superannuation on April 30, 2011. The learned Single Judge disposed of the writ petition leaving it open for DTC to inflict a penalty other than one of removal from service. The learned Single Judge has held that if as a consequence of imposition of the punishment, the respondent becomes liable to refund any portion of the amount he has received under Section 17-B of the Industrial Disputes Act, 1947 the same shall be adjusted.

12. Though the said order is not clear, but it is apparent that refund would

be of such amount which the appellant has received during the pendency of the WP(C) 5092/2011 after he had superannuated from service i.e. on April 30, 2011.

13. After the writ petition was decided, DTC has levied a penalty on August 07, 2013. The penalty is of reduction in the pay scale by four stages upto April 30, 2011.

14. Now, a very funny situation has come into being. The appellant is to be reinstated in service in terms of the award dated December 06, 2010. Back wages had been denied. The appellant would be deemed to have superannuated from service on April 30, 2011. The appellant would thus be entitled to wages as per the award from December 07, 2010 till April 30, 2011. For the period preceding thereto the appellant is not entitled to any wages. Thus reducing his pay for four years is of no consequence except the period between December 07, 2010 and April 30, 2011.

15. Under the circumstances the only way forward is to dispose of the appeal by bringing the curtains down noting that the appellant superannuated from service on April 30, 2011. Since the appellant is not entitled to any pension the question of inflicting any penalty post superannuation does not arise for the reason the applicable service rules concededly do not envisage continuation of disciplinary proceedings post superannuation. In conformity with the award the appellant would not be entitled to any back wages for the reason said direction in the award was not challenged by the appellant. Appellant's reinstatement would therefore have to be post the award till he superannuated from service. For this period no wage need be paid to the appellant for the reason till the writ petition was decided he continued to receive the last drawn wages in terms of Section

17-B of the Industrial Disputes Act. In another words, the appellant has received excess payment from the month of May, 2011 till the writ petition was decided on May 16, 2013. The appellant need not refund any amount. DTC need not pay him any further wages. Having superannuated from service we are told that the appellant has received such amounts as were lying to in his credit in the contributory provident fund account.

16. The chapter between the parties is thus closed by passing the above directions.

17. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 31, 2015
‘skb’